



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
[REDACTED]  
FOO/172401

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 29, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 22, 2016, at Green Bay, Wisconsin.

The issue for determination is whether the county agency correctly and accurately calculated the petitioner's FoodShare (FS) benefits to be \$194 for January and February, 2016, based upon the reduction of persons in her FS household eligible for FS benefits from three to one person.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] ES Supervisor  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. During January, 2016, petitioner applied for FoodShare (FS) benefits for a household of three: a) petitioner; b) her son, [REDACTED]; and c) her granddaughter, [REDACTED].

3. At the time of petitioner's January, 2016 FS application, [REDACTED] was incarcerated and thus was not a part of the petitioner's FS household. [REDACTED] continued to be incarcerated as of the March 22, 2016 hearing in this case.
4. The petitioner was convicted of a drug felony, Possession of Amphetamine/LSD Psilocin on August 12, 2014 in violation of sec. 961.41(3g)(d), Wis. Stats. The county agency established with reliable evidence that petitioner tested "positive" for Opiates and Oxycodone in her required drug screen on November 21, 2015. Due to failing her drug screen, she was not eligible for FS benefits.
5. The county agency sent a January 13, 2016 Notice of Decision to the petitioner stating that based upon her January, 2016 FS application petitioner was found eligible for FS of \$194 for each month of January and February, 2016 solely for FS for her granddaughter, [REDACTED]. Petitioner was ineligible for FS for 12 months due to her conviction of a drug felony and having failed a drug test (Finding of Fact #4 above). Petitioner's son [REDACTED] was ineligible for FS because he was incarcerated during the period of petitioner's FS application.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. §273.9(b). From the gross household income, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$134 per month for all households. 7 C.F.R. §273.9(d)(1); *FoodShare Wisconsin Handbook*, §4.6; (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); *FoodShare Wisconsin Handbook*, §4.6; (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d)(3); *FoodShare Wisconsin Handbook*, §4.6.4; (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d)(4); *FoodShare Wisconsin Handbook*, §4.6.6; and (5) shelter expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); *FoodShare Wisconsin Handbook*, §4.6.7.

During the March 22, 2016 hearing, ES Supervisor [REDACTED] [REDACTED], provided petitioner a detailed explanation regarding the calculation of her FS benefit for January and February, 2016 based upon FS law and policy. During that hearing, petitioner argued that she only tested positive for Oxycodone because she alleged, without documentation, that she was prescribed Oxycodone to treat some pain issues. However, petitioner was unable to provide any evidence of such prescription for Oxycodone as a pain medication. Even if that were the case, petitioner also tested "positive" for Opiates during her drug test. Finding of Fact #4 above. The petitioner was unable to provide any reliable testimony or evidence to refute that she failed her drug test for Opiates in addition to Oxycodone.

Furthermore, petitioner was unable to refute that her son, [REDACTED], was incarcerated during the period of her January, 2016 FS application through at least the date of the March 22, 2016 hearing. Because [REDACTED] was incarcerated, he was thus not living in petitioner's FS household. The petitioner was unable to refute Ms. [REDACTED]'s explanation as to how her FS benefits had correctly been calculated. The petitioner was also unable to indicate any error or inaccuracy in the county's calculation of her FS benefits for July or August, 2014. In reviewing the county agency's determination of petitioner's FS benefits, I find no error. Accordingly, based upon the above, I conclude that the county agency correctly and accurately calculated the petitioner's FoodShare (FS) benefits to be \$194 for January and February, 2016, based upon the reduction of persons in her FS household eligible for FS benefits from three to one person.

### CONCLUSIONS OF LAW

The county agency correctly and accurately calculated the petitioner's FoodShare (FS) benefits to be \$194 for January and February, 2016, based upon the reduction of persons in her FS household eligible for FS benefits from three to one person.

**THEREFORE, it is**

### ORDERED

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

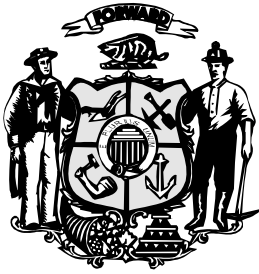
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 8th day of April, 2016

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 8, 2016.

Brown County Human Services  
Division of Health Care Access and Accountability